

Attorney Docket No. 356-008-DV1

REMARKS

This Amendment and Response is being submitted in response to the final Office action mailed on October 28, 2005 and is considered fully responsive thereto. Claims 1 and 3-20 were pending prior to this amendment and response. Of those claims, claims 1, 3-9, and 11-20 were rejected and claims 13 and 14 were allowed. Applicant has amended claims 3, 7, 8, 11, 13, 15, 16, 18, and 19. Applicant has also canceled claims 1, 4-6, 10, and 12. No new matter has been added.

The Examiner and Applicant's undersigned representative participated in a telephone conference on February 18, 2006 in which Applicant's representative brought a prior amendment to claim 13 to the Examiner's attention in which limitations from claim 1 were added into claim 1 in order to re-write the claim in independent format. The limitations added in the prior amendment, however, were unrelated to the previous limitation of dependent claim 13, which originally depended from claims 6, 10, and 12. Applicant's representative accordingly suggested amending claim 13 to place it in independent form by replacing the previously added limitations from original claim 1 with limitations from claims 6, 10, and 12. The Examiner indicated that such a claim would be allowable.

In response to the telephone conference, Applicant has amended claim 13 to replace the limitations of claim 1 with the limitations of claims 6, 10, and 12. Accordingly, claim 13 is now in a condition for allowance. Applicant has also amended claims 3, 7, 8, 11, 15, 16, 18, and 19 to depend from allowable claim 13. Applicant has also canceled claims 1, 4-6, 10, and 12. Thus, claim 13 is the only remaining independent claim and the remaining dependent claims 3, 7-8, 11, and 14-20 depend either directly or indirectly from allowable claim 13 and are allowable for at least the same reasons as independent claim 13.

Rejections Under 35 U.S.C. § 103(a)

Applicant believes that the amendments discussed above further obviate the Examiner's rejections under 35 USC § 103(a) for at least the same reasons as claim 13 is allowable.

Examiner Arguments of Official Notice

The Examiner states that the features stated in the Examiner's Official Notices will be considered admitted prior art due to Applicant not previously challenging the Examiner's unsupported allegations. Applicant, however, hereby challenges these unsupported allegations for at least the following reasons. As stated in MPEP §2144.03, the practice of

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"official notice" should only be taken "where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as to defy dispute."

The Examiner, for example, contends that it would have been obvious to choose material having a coefficient of thermal expansion matching that of glass to ensure reliable welding without providing any documentary evidence in support of that allegation. As described in the specification of the present application, however, the material having a coefficient of thermal expansion substantially similar to glass is not a part of the capacitor that is even welded. In one embodiment described in the specification, for example, a first terminal comprising a material having such a thermal coefficient and comprises a "pass-through" terminal that passes through a header and is sealed to the header through the use of a hermetic or glass-to-metal seal (see, e.g., pp. 46-49). While the header is sealed to a case in some embodiments via a weld (e.g., p. 55, ll. 22-32), the first terminal (having the claimed thermal coefficient) is not even welded in some embodiments. Thus, Applicant cannot understand how the Examiner's assertion that such a material would have been obvious because it would have enabled reliable welding could even be applicable, especially where the material as used in the claimed invention is not necessarily even welded. The Examiner also contends that other missing limitations are well known in the art and are commonly used to reduce capacitor size. The Examiner has similarly failed to provide facts that are "capable of instant and unquestionable demonstration as to defy dispute." Thus, Applicant does not admit that the Examiner's attempts to take unwarranted official notice creates admitted prior art to the claimed invention.

Extension of Time

This Amendment is submitted contemporaneously with a petition for a one-month extension of time in accordance with 37 CFR § 1.136(a). Accordingly, please charge Deposit Account No. 50-3199 in the amount of \$60.00 for a one-month extension of time fee. The Applicant believes no further fees or petitions are required. However, if any such petitions or fees are necessary, please consider this a request therefor and authorization to charge Deposit Account No. 50-3199 accordingly.

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CONCLUSION

Applicant believes that this Amendment and Response places claims 3, 7-9, 11, and 13-20 in a condition for allowance for at least the reasons stated above. Accordingly, Applicant respectfully requests the Examiner to enter the Amendment and to issue a Notice of Allowance for claims 3, 7-9, 11, and 13-20.

If the Examiner believes that a telephone conference would be helpful in resolving any remaining issues with respect to this application, Applicant requests that the Examiner telephone Applicant's undersigned representative at the number listed below.

Dated: February 28, 2006.

Respectfully submitted,



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